

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Glenn Brown	Team: Team # 1	CCRB Case #: 201404671	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 04/08/2014 12:30 PM	Location of Incident: 433 Beach 40th Street; 101st Precinct Stationhouse	Precinct: 101	18 Mo. SOL 10/8/2015	EO SOL 10/8/2015	
Date/Time CV Reported Wed, 05/14/2014 9:47 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 05/14/2014 9:47 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Patrick Norcott	02153	940514	101 PCT
2. LT Arsenio Camilo	00000	938152	101 PCT
3. Officers			101 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Andrew Hayes	17315	944640	101 PCT
2. SGT Estefany Garcia	3466	946949	101 PCT
3. SGT Traci Jamersonbarrett	02039	906508	101 PCT

Officer(s)	Allegation	Investigator Recommendation
A.LT Arsenio Camilo	Abuse: Lt. Arsenio Camilo stopped an individual.	
B. Officers	Abuse: Officers frisked an individual.	
C.LT Arsenio Camilo	Abuse: Lt. Arsenio Camilo stopped § 87(2)(b)	
D.POM Patrick Norcott	Abuse: PO Patrick Norcott stopped § 87(2)(b)	
E.POM Patrick Norcott	Abuse: PO Patrick Norcott frisked § 87(2)(b)	
F.POM Patrick Norcott	Abuse: PO Patrick Norcott searched § 87(2)(b)	
G.LT Arsenio Camilo	Abuse: Lt. Arsenio Camilo interfered with § 87(2)(b)'s ability to record an incident.	
H.LT Arsenio Camilo	Discourtesy: Lt. Arsenio Camilo spoke discourteously to § 87(2)(b)	
I.LT Arsenio Camilo	Force: Lt. Arsenio Camilo used physical force against § 87(2)(b)	
J.LT Arsenio Camilo	Abuse: Lt. Arsenio Camilo threatened § 87(2)(b) with the use of force.	
K.LT Arsenio Camilo	Abuse: Lt. Arsenio Camilo arrested § 87(2)(b)	

Case Summary

On April 8, 2014, at approximately 11:45 am, Brian § 87(2)(b) allegedly saw an unidentified individual stopped and frisked in front of 433 Beach 40th Street in Queens by Lt. Arsenio Camilo, PO Patrick Norcott, and PO Andrew Hayes of the 101st Precinct (**Allegations A and B**). Forty-five minutes later, at approximately 12:30 pm, PO Norcott and Lt. Camilo stopped § 87(2)(b) in front of 433 Beach 40th Street (**Allegations C and D**). Upon stopping § 87(2)(b) PO Norcott allegedly frisked § 87(2)(b)'s jacket pockets, pants pockets, and legs (**Allegation E**). After frisking § 87(2)(b)'s jacket pockets, PO Norcott allegedly placed his hands inside of the jacket pockets (**Allegation F**). § 87(2)(b) attempted to film the officers' badge numbers on his cell phone and Lt. Camilo reached for his phone and § 87(2)(b) pulled it away (**Allegation G**). § 87(2)(b) complained about the frisk and search and one of the officers placed him into handcuffs. Lt. Camilo allegedly said, "Since you're being a dick, we have to take you down the Precinct to identify you," or "Since you don't wanna give your name, we gotta take you in," (**Allegation H**). Lt. Camilo also allegedly said, "That's what you get for being a dick," (**Allegation H**). In response to § 87(2)(b)'s complaints about the frisk and search, a small crowd formed, and Lt. Camilo allegedly told this crowd something along the lines of, "Don't mind him, he's being a dick," or "Don't pay attention to this dick, he's just making a show," (**Allegation H**). § 87(2)(b) was then brought over to a police vehicle and after § 87(2)(b) sat down, Lt. Camilo asked him something like, "What the fuck are you doing?" (**Allegation H**) and punched him once in the forehead (**Allegation I**). On the ride to the stationhouse, Lt. Camilo said, "You're a dick," "Suck my dick," "You wanna hit the ghetto lottery," and "Since you wanna be a dick, now we gotta take you to the Precinct," (**Allegation H**). Lt. Camilo also allegedly cocked his fist back in a gesture that made it seem like he was about to punch § 87(2)(b) (**Allegation J**). Outside of the stationhouse, § 87(2)(b) told Lt. Camilo that he was stuck and could not exit the vehicle and Lt. Camilo allegedly responded, "Oh you wanna be a dick? Now you gotta get out on your own for being a dick," (**Allegation H**). Inside the stationhouse and in front of the desk, Lt. Camilo allegedly told Sgt. Traci Jamerson-Barrett, "This is the biggest dick I've ever met," "This is the biggest dick in the world," and called § 87(2)(b) a "fucking dick," (**Allegation H**). Lt. Camilo then told Sgt. Jamerson-Barrett, "All these hoodlums just wanna hit the ghetto lottery," (**Allegation H**). A voided arrest for § 87(2)(a) 160.50 was prepared for § 87(2)(b) (**Allegation K**) and as he was leaving the stationhouse Lt. Camilo told officers at the stationhouse that § 87(2)(b) was a "fucking dick," (**Allegation H**). § 87(2)(b) was released without a summons or a Desk Appearance Ticket (complaint encl. B1-2, CCRB statement encl. B3-7). The officers' initial approach and early conversation with § 87(2)(b) were video-recorded by § 87(2)(b) on his cell phone (encl. B11-12).

Mediation, Notice of Claim, and Criminal Histories

This complaint was not eligible for mediation. On § 87(2)(b), § 87(2)(b) filed a Notice of Claim with the Comptroller's Office seeking damages for physical injury, pain and suffering, discomfort, and mental anguish due to false arrest and imprisonment, which resulted in cruel and inhuman treatment, shame, humiliation, and injury to his reputation. § 87(2)(b) is seeking \$250,000 as redress (encl. E1-4). § 87(2)(c), § 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Civilian and Officer CCRB Histories

- § 87(2)(b)

- § 87(2)(b)
- Lt. Camilo has been a member of service for nine years and there are three substantiated allegations against him (encl. A6-7). In CCRB case number 200802601, one of the three allegations substantiated against Lt. Camilo included a search of person and he was disciplined with instructions; the other two substantiated allegations were a vehicle stop and a vehicle search.
 - PO Norcott has been a member of service for nine years and there are no substantiated allegations against him (encl. A5).

Findings and Recommendations

Explanation of Subject Officer Identification

§ 87(2)(b) alleged that before he was stopped he observed PO Norcott, Lt. Camilo, and PO Hayes stop his friend (whom he knew only as “DD”). All of the officers interviewed denied stopping anyone before stopping § 87(2)(b). Because Lt. Camilo was the highest ranking officer to allegedly stop this individual, Allegation A has been pled against Lt. Camilo.

After this individual was stopped, § 87(2)(b) stated that the officers frisked him. Because § 87(2)(b) did not specify which of the three officers frisked this individual, the investigation could not identify the subject of the allegation. Therefore, Allegation B has been pled against “An officer” from the 101st Precinct.

Lt. Camilo and PO Norcott acknowledged interacting with § 87(2)(b) and § 87(2)(b) provided accurate descriptions of these officers. Therefore, Allegations C through K have been variously pled against Lt. Camilo and PO Norcott.

- **Allegation A) Abuse of Authority: Lt. Arsenio Camilo stopped an individual.**
- **Allegation B) Abuse of Authority: Officers frisked an individual.**

§ 87(2)(b) stated that about 45 minutes before he was stopped, he saw an individual whom he only knew as “DD” stopped by PO Norcott, Lt. Camilo, and PO Hayes and that the officers subsequently frisked him.

PO Norcott, Lt. Camilo, and PO Hayes did not have any notation of a stop in their memo books and the Stop, Question, and Frisk Log did not record any other stops made in the vicinity by the officers (encl. D5, F1). Furthermore, a conversation with the NYCHA Law Department on May 22, 2014 confirmed that there are no surveillance cameras at the Beach 41st Street Houses (encl. F4). Because § 87(2)(b) could not provide any more specific identifying information for DD, and because police and NYCHA documentation could not provide any record of the alleged stop, the investigation could not determine the victim’s identity. § 87(2)(g)

§ 87(2)(b)

- **Allegation C) Abuse of Authority: Lt. Arsenio Camilo stopped § 87(2)(b)**
- **Allegation D) Abuse of Authority: PO Patrick Norcott stopped § 87(2)(b)**

§ 87(2)(b) stated that he had been standing in front of 433 Beach 40th Street for five to ten minutes with his headphones in his ears, his cell phone in his hand, and nothing in his pockets when Lt. Camilo, PO Norcott, and PO Hayes approached him. Later in his statement, § 87(2)(b) acknowledged that he had his glasses on him at this time and that once he was in the police vehicle, he realized that his glasses were in his pocket (encl. B3-9). The cell phone video that § 87(2)(b) recorded of the incident confirms that Lt. Camilo, PO Norcott, and PO Hayes approached § 87(2)(b) and that PO Norcott spoke with § 87(2)(b) for over 30 seconds before he leaned in to frisk him (encl. B11-12).

PO Norcott stated that from approximately 50 feet away he observed a large, straight, and rigid bulge in § 87(2)(b)’s front left pants pocket, which he suspected might have been caused

by the barrel of a gun. PO Norcott also wanted to establish whether § 87(2)(b) was a resident of the building in front of which he was standing and stated that nothing aside from the presence of the bulge made him suspect that § 87(2)(b) had a firearm on him. PO Norcott also suspected § 87(2)(b) of trespassing (encl. C1-16). The Stop, Question, and Frisk Report that PO Norcott prepared in relation to the stop confirmed that the only circumstance that led to the stop was a “suspicious bulge/ object” that turned out to be an eyeglasses case in § 87(2)(b)’s left pocket (encl. C5-6, F1). The report also noted that the period of observation of § 87(2)(b) lasted one minute, and that there was a high incidence of the suspected crime in the area, which PO Norcott explained was noted because there had been numerous shootings and gun arrests at the location.

Lt. Camilo also stated that the reason for the stop was that he observed a large bulge in § 87(2)(b)’s left front pants pocket (Lt. Camilo could not provide any further description of the bulge). This bulge, plus the gun prone nature of the area, led Lt. Camilo to believe that bulge was a firearm. Lt. Camilo and PO Norcott approached § 87(2)(b) in order investigate the origin of the bulge and to determine whether or not he lived at 433 Beach 40th Street because he also suspected him of trespassing (encl. C17-25).

PO Hayes did not recall why § 87(2)(b) was stopped, though he noted in his memo book that he had a suspicious bulge in his pants pocket (encl. C26-33).

Patrol Guide Procedure 212-11 requires that officers reasonably suspect a civilian has committed, is committing, or is about to commit a crime in order to stop him (encl. i-iv). People v. Gerard 94 A.D.3d 592 (App. Div. 3d Dep’t. 2012) found that a defendant’s weighted-down pocket in a “gun-prone” location in combination with several other factors provides officers with only a founded suspicion that criminality is afoot. People v. Holmes, 81 N.Y.2d 1056 (1993) held that observing an individual in a “high crime area” with an unidentified bulge provided officers with only an objective credible reason to approach the defendant, not to stop him (encl. v-vi, vii-ix).

§ 87(2)(g)

• **Allegation E) Abuse of Authority: PO Patrick Norcott frisked § 87(2)(b)**

§ 87(2)(b) stated that soon after Lt. Camilo, PO Norcott, and PO Hayes approached him, PO Norcott asked him a series of questions and then asked him if he had any weapons on him. After § 87(2)(b) said that he did not, PO Norcott, frisked § 87(2)(b)’s jacket pockets, his pants pockets, and then his legs all the way down to his ankles. The video footage shows PO Norcott leaning into § 87(2)(b) after he denied that he had any weapons on him. The camera angle tilts downward and shows PO Norcott touching the outside of § 87(2)(b)’s left pants pocket with his right hand while his left arm is extended around the left side of § 87(2)(b)’s body (though the camera does not show what, if any, contact is made by PO Norcott’s left hand).

PO Norcott stated that he frisked § 87(2)(b)’s left front pants pocket and was not sure if he frisked § 87(2)(b)’s other pants pocket. PO Norcott stated that he frisked § 87(2)(b) to

determine what the bulge in his pants pocket was because he believed it was a firearm and that aside from the presence of the bulge, there was nothing else that made PO Norcott believe that § 87(2)(b) had a firearm. The Stop, Question, and Frisk Report also noted that PO Norcott frisked § 87(2)(b) and that this frisk determined that the observed bulge was simply an eyeglass case.

Lt. Camilo did not recall § 87(2)(b) being frisked at any time before he was placed into handcuffs, though he did state that § 87(2)(b) made a sudden reaching movement to his left pants pocket (the location of the bulge) soon after the officers approached. PO Norcott did not state that § 87(2)(b) made this reaching motion and PO Hayes did not recall § 87(2)(b) ever being frisked during the incident.

People v. De Bour 40 N.Y.2d 210 (1976) requires that officers reasonably suspect that a civilian is armed before they frisk him (encl. x-xx). People v. Hill 262 A.D.2d 870 (App. Div. 3d Dep't. 1999) holds that a pocket bulge unto itself is not enough to arouse suspicion that a suspect is armed (encl. xxi-xxii).

§ 87(2)(g)

• **Allegation F) Abuse of Authority: PO Patrick Norcott searched § 87(2)(b)**

§ 87(2)(b) alleged that once PO Norcott frisked the exterior of his jacket pockets, PO Norcott placed his hands inside of his pockets. The video of the incident recorded a dialogue between PO Norcott and § 87(2)(b) in which § 87(2)(b) told PO Norcott, "No, I don't give you consent to search me," as soon as PO Norcott leaned towards him. PO Norcott replied, "I'm not searching you," and § 87(2)(b) asked, "Are you sure that's not searching me?" PO Norcott said, "If I went in your pockets that would be searching you," and Lt. Camilo also said, "No, that's not a search." § 87(2)(b) asked again why he was being searched and PO Norcott said, "I didn't search you." § 87(2)(b) replied, "You just touched my pockets - that's searching me," and PO Norcott said, "I just frisked you to make sure you had no weapons." During this conversation, the video shows PO Norcott frisking § 87(2)(b)'s left front pants pocket, but does not reveal PO Norcott placing his hands into his pockets.

PO Norcott and Lt. Camilo both denied that PO Norcott placed his hands into § 87(2)(b)'s pockets before § 87(2)(b) was placed into handcuffs. PO Hayes did not recall § 87(2)(b) ever being searched on the scene.

§ 87(2)(g)

• **Allegation G) Abuse of Authority: Lt. Arsenio Camilo interfered with § 87(2)(b)'s ability to record an incident.**

§ 87(2)(b) alleged that after the officers approached him he attempted to film their shields and nameplates and, in response, Lt. Camilo grabbed for his phone. § 87(2)(b) pulled the phone

away from Lt. Camilo, disabled the recording, and then handed it off to a friend who was standing nearby.

The video clearly shows that Lt. Camilo grabbed at § 87(2)(b)'s phone two different times and the first time § 87(2)(b) asked him, "Why you grabbing my phone for?" Approximately 40 seconds later, § 87(2)(b) brought the phone down next to his side and said, "Don't touch my phone." Seconds after that, the recording abruptly ended.

Patrol Guide Procedure 208-03 states that it is lawful for individuals to videotape police incidents (encl. xxiii-xxxv).

§ 87(2)(g)

- **Allegation H) Discourtesy: Lt. Arsenio Camilo spoke discourteously to § 87(2)(b)**
- **Allegation I) Force: Lt. Arsenio Camilo used physical force against § 87(2)(b)**
- **Allegation J) Abuse of Authority: Lt. Arsenio Camilo threatened § 87(2)(b) with the use of force.**

§ 87(2)(b) alleged that Lt. Camilo made numerous discourteous remarks throughout the incident, in addition to alleging that Lt. Camilo punched him in the forehead and then later, cocked his fist as if he was going to punch him. § 87(2)(b) stated that during the handcuffing process, Lt. Camilo said to § 87(2)(b) "Since you're being a dick, we have to take you down to the precinct to identify you." Later in his statement, § 87(2)(b) modified this statement to, "Since you don't wanna give your name, we gotta take you in." Lt. Camilo also said during the handcuffing process, "That's what you get for being a dick," and told the assembled crowd, something along the lines of, "Don't mind him, he's being a dick," or, "Don't pay attention to this dick, he's just making a show."

Once § 87(2)(b) was placed into the police vehicle and while the door was still open, he removed his legs from the vehicle and Lt. Camilo asked, "What the fuck are you doing?" and punched § 87(2)(b) in the middle of the forehead with his left hand. § 87(2)(b) could not recall if those were Lt. Camilo's exact words, but stated that it was that "type of language."

On the ride to the stationhouse, Lt. Camilo told him, "You're a dick," "Suck my dick," and, "You just want to hit the ghetto lottery." Then, Lt. Camilo also turned to § 87(2)(b) and cocked his fist in a gesture that made it seem that he was about to punch § 87(2)(b) though he did not punch him. Then Lt. Camilo adjusted his seat so that it pressed against § 87(2)(b)'s knees. Also on the ride to the stationhouse, an unspecified officer told § 87(2)(b) "Since you wanna be a dick, now we gotta take you to the Precinct."

At the stationhouse, when § 87(2)(b) was exiting the vehicle, he said that he was stuck and Lt. Camilo replied, "Oh you wanna be a dick? Now you gotta get out on your own for being a dick."

In front of the desk at the stationhouse, Lt. Camilo told Sgt. Jamerson-Barrett, "This is the biggest dick I've ever met," "This is the biggest dick in the world," and called § 87(2)(b) a "fucking dick." Then Lt. Camilo told Sgt. Jamerson-Barrett, "All these hoodlums just wanna hit the ghetto lottery." As § 87(2)(b) was leaving the stationhouse, Lt. Camilo told other officers that § 87(2)(b) could not describe that § 87(2)(b) was a "fucking dick." § 87(2)(b) did not receive any medical treatment after his arrest and did not allege sustaining any visible injuries.

All of the officers interviewed denied these allegations. § 87(2)(b) an uncooperative witness who only provided a phone statement and saw § 87(2)(b)'s handcuffing, did not hear any profanity used towards § 87(2)(b) though also stated that she was not close enough to hear (encl. B10, F2). Sgt. Jamerson-Barrett did not recall Lt. Camilo making the alleged remarks when

§ 87(2)(b) was brought in front of the desk (encl. C34-37). The video provided by § 87(2)(b) also did not capture any of the discourtesies. § 87(2)(g)

• **Allegation K) Abuse of Authority: Lt. Arsenio Camilo arrested** § 87(2)(b)

It is undisputed that § 87(2)(b) was standing in front of 433 Beach 20th Street until PO Norcott, Lt. Camilo, and PO Hayes approached him and started to question him. It is also undisputed that after the officers approached him, § 87(2)(b) started speaking loudly and refused to place his arms behind his back. Eventually the officers placed him into handcuffs and brought him back to the stationhouse where an arrest for § 87(2)(a) 160.50

What led to this arrest and subsequent voiding, however, is in dispute.

PO Norcott stated that § 87(2)(b)'s avoidance of a frisk, his yelling, and subsequent unwillingness to be handcuffed caused a crowd to form. As a result of § 87(2)(b)'s overall "boisterousness," Lt. Camilo instructed PO Norcott to place § 87(2)(b) under arrest.

Lt. Camilo provided a different explanation for § 87(2)(b)'s handcuffing and removal to the stationhouse. Lt. Camilo stated that § 87(2)(b) moved his hand into his pocket and that Lt. Camilo grabbed it. In response, § 87(2)(b) pulled his hand away from Lt. Camilo and started to flail his arms, which made Lt. Camilo fear for his safety. As a result, Lt. Camilo and PO Norcott placed him into handcuffs. At this point, Lt. Camilo stated that he did not intend to issue § 87(2)(b) a summons because he had not committed any summonsable offenses. But because § 87(2)(b) did not have any identification on him, Lt. Camilo needed to bring him back to the stationhouse to determine whether he had any open warrants and to fill out a Stop, Question, and Frisk Report. Lt. Camilo also stated that because § 87(2)(b) was behaving violently, Lt. Camilo could not conduct his investigation and wanted to bring § 87(2)(b) to the stationhouse's "controlled environment." Lt. Camilo acknowledged that a Stop, Question, and Frisk Report can be filled out without an individual's name being written on it. Lt. Camilo further stated that § 87(2)(b) was never under arrest and that the arrest report was generated as a voided arrest (and not voided after it was generated); the § 87(2)(a) 160.50

PO Hayes did not know why § 87(2)(b) was arrested.

The video recording of the incident reveals that § 87(2)(b) did raise his voice above a normal conversational volume at several points while he was complaining to the officers.

The Command Log entry for § 87(2)(b)'s arrest noted that there was no probable cause to arrest § 87(2)(b) (encl. D6, F1).

An officer may arrest an individual for an offense when he or she has reasonable cause to believe that such person committed an offense in their presence, N.Y. C.P.L. §140.10 (1)(a) (encl. xxxvi-xxxix). A person commits disorderly conduct when with the intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof, he makes unreasonable noise, N.Y.S. Penal Law, §240.20 (2) (encl. x1). The disorderly conduct statute is aimed at conduct which incites or risks inciting "a breach of the peace" or "public disturbance" and applies to situations which carry beyond individual disputants and become a public concern, People v. Square, 20 Misc.3d 1126A (N.Y. Cty. Crim. Ct. 2008) (encl. xli-xlv). Furthermore, "The mere expression that one feels aggrieved by the police – even when uttered in a loud voice – cannot constitute an offense."

§ 87(2)(g)

§ 87(2)(g) [Redacted]
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Team: 1

Investigator:	_____	_____	_____
	Signature	Print	Date

Supervisor:	_____	_____	_____
	Title/Signature	Print	Date

Reviewer:	_____	_____	_____
	Title/Signature	Print	Date

Reviewer:	_____	_____	_____
	Title/Signature	Print	Date